

**United States Department of Labor
Employees' Compensation Appeals Board**

Y.L., Appellant)

and)

DEPARTMENT OF THE TREASURY,)
INTERNAL REVENUE SERVICE,)
Richmond, VA, Employer)

Docket No. 10-557
Issued: November 16, 2010

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 14, 2009 appellant filed a timely appeal from a June 16, 2009 nonmerit decision of the Office of Workers' Compensation Programs. The last merit decision was issued on December 10, 2008. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

Appellant, a 38-year-old revenue officer, filed a Form CA-2 claim for benefits based on an emotional condition on July 29, 2008. She experienced high levels of stress because her job required interacting with taxpayers, issuing liens and levies and maintaining a heavy caseload.

Appellant advised that she developed an adjustment disorder, anxiety, depressed mood, panic disorder and dependent personality disorder causally related to factors of her employment. She stopped work as of March 13, 2008.

By letter dated September 11, 2008, the Office advised appellant that she needed to submit additional information in support of her claim. It asked her to describe in further detail the employment-related conditions or incidents which she believed contributed to her emotional condition and to provide specific descriptions of all incidents which she believed caused her condition. The Office also requested medical evidence in support of appellant's claim.

In a report dated May 20, 2008, received by the Office on September 15, 2008, Andee Gay, a licensed professional counselor, stated that appellant had recently experienced significant anxiety, episodic depression, with accompanying symptoms of emotional illness. She related that these conditions had been precipitated by a change of employment, conflict with appellant's supervisor, the death of her niece, job dissatisfaction, job stress and threatened job termination. Ms. Gay advised that, without a job change, appellant's symptoms would continue to worsen. Appellant was normally a competent individual; but the extreme nature of her reaction to the above stressors made a successful recovery unlikely. Ms. Gay submitted progress notes to the record.

In a July 24, 2008 statement, appellant noted that "overwhelming" job duties caused her inability to handle her case inventory and resulted in the development of her emotional condition. This was exacerbated by the death of her niece in August 2007 and car problems she experienced in September 2007, which precluded her from making field visits. When she asked management to grant her a hardship or reassign her, she was told to buy a car or do whatever it took to get caught up. Appellant alleged that she was unable to obtain guidance on the next course of action without criticism from her manager. Her manager told her in November 2007 that her performance was failing and that she needed to improve or she could risk losing her job. Appellant subsequently began to work two or three hours beyond her shift in order to complete her assignments and meet deadlines. She began to experience increased tension, forgetfulness, rapid heart beat, impaired speech, difficulty breathing and an inability to concentrate. She struggled with her workload because she had limited field contacts, limited experience, lack of training and no assistance from the senior revenue officer. After receiving a minimally successful mid-year assessment in December 2007 and a memorandum pertaining to her substandard decreased performance in March 2008, appellant experienced a panic attack on March 13, 2008 and had not returned to work.

In an August 25, 2008 statement, Janet Grimes, appellant's manager, denied appellant's allegations. She noted that appellant was selected as a GS-7 revenue officer on May 30, 2006, and was provided with individualized training, workshops, case directions, guidance and accompaniment on field visits. During her first year, appellant used 134.5 hours of leave, which caused the delay of her field visits. Therefore, she was not assigned additional inventory. Ms. Grimes stated that appellant's work situation deteriorated when her niece died and she began to experience car problems. In November 2007 she informed appellant that her job performance was substandard and gave her guidance regarding how she could improve. Appellant was provided with an assistant to help her complete her assignments. Ms. Grimes stated that appellant's performance continued to decline and that her December 27, 2007 mid-year

assessment was at the minimally successful level. On December 12, 2007 appellant was assigned a normal, target inventory level for a GS-9 employee, as it was unfair to the other GS-9 employees for her to have a reduced inventory. In light of her continuing inability to meet her performance standards, management denied a within-grade pay increase scheduled for June 9, 2008 and issued a performance improvement plan (PIP) on June 16, 2008.

Appellant submitted reasonable accommodation request forms dated March 26 and 28, April 8 and May 7, 2008. She also submitted undated statements from Djunia Cunningham and Betty Springer, coworkers, who advised of witnessing appellant having an anxiety attack on March 13, 2008.

In a May 9, 2008 report, Dr. Neil Presant, Board-certified in preventive medicine, opined that appellant's diagnosed conditions of adjustment disorder, anxiety and depression and panic attacks made her unsuited for her usual job as a revenue officer. The job required an aggressive personality and invariably entailed conflict with taxpayers; however, appellant had difficulty being assertive and in handling confrontational situations. Dr. Presant advised that her adjustment disorder would likely become less symptomatic if she was transferred to a position that did not involve confrontations.

By decision dated December 10, 2008, the Office denied appellant's claim. It found that she failed to establish a compensable factor of employment as there was no evidence to establish administrative error or abuse.

On May 9, 2009 appellant requested reconsideration. In a May 15, 2009 report, Charlotte Ekard, a behavioral psychologist, stated that appellant was being treated for anxiety disorder and panic disorder primarily caused by stress from her work environment. Appellant had made progress and had reduced her anxiety symptoms since beginning medication; however, she continued to experience panic from her job situation and the loss of her niece. Ms. Ekard concluded that, based on her clinical presentation and course of treatment, appellant would probably require treatment with medication for at least a year.

Appellant submitted work excuse slips from Ms. Ekard dated April 30 and May 28, 2008 and work excuse slips from Dr. Robit M. Desai, a specialist in family practice, dated March 17 to May 14, 2008. She also resubmitted evidence of record.

By decision dated June 16, 2009, the Office denied appellant's request for reconsideration. It found that the evidence submitted did not raise a substantive legal question or include new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by constituting relevant and pertinent evidence not previously considered by the Office.¹ Evidence that repeats

¹ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²

ANALYSIS

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted in connection with her May 9, 2009 reconsideration request is not pertinent to the underlying issue on appeal. The Office denied appellant's claim for an emotional condition, finding that she failed to establish a compensable employment factor. The evidence submitted on reconsideration is not relevant to this issue.

The reports from Ms. Gay, Dr. Presant, the May 15, 2009 report and work excuse slips from Ms. Ekard and Dr. Desai are not relevant to the issue of whether appellant established compensable factors of employment as a cause of her alleged emotional condition.³ While these documents address appellant's current mental status, they are not relevant to establish any allegation of administrative error or abuse in assessing her job performance or placing her on a PIP. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening the claim.⁴

The reasonable accommodation request forms were previously considered by the Office and are therefore cumulative and repetitive. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

² *Howard A. Williams*, 45 ECAB 853 (1994).

³ The Board notes that in claims for an alleged emotional condition, medical evidence will not be considered where appellant has not established a compensable work factor. *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁴ *See David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board